

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Beacon Fast Freight Co., Inc. : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Corporation :
Franchise Tax under Article 9 of the Tax Law for :
the Period 12/31/81. :

State of New York }
ss.:
County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 5th day of October, 1984, he served the within notice of Decision by certified mail upon Beacon Fast Freight Co., Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Beacon Fast Freight Co., Inc.
c/o Robert C. Hague, Controller
P.O. Box 45, 520 Bodwell St. Ext.
Avon, MA 02322

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
5th day of October, 1984.

David Parchuck

Amie P. Hague
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

October 5, 1984

Beacon Fast Freight Co., Inc.
c/o Robert C. Hague, Controller
P.O. Box 45, 520 Bodwell St. Ext.
Avon, MA 02322

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
BEACON FAST FREIGHT CO., INC.	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Corporation Franchise Tax under	:	
Article 9, Section 184 of the Tax Law for the	:	
Year 1981.	:	

Petitioner, Beacon Fast Freight Co., Inc., P.O. Box 45, 520 Bodwell Street Extension, Avon, Massachusetts 02322, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9, Section 184 of the Tax Law for the year 1981 (File No. 41589).

A formal hearing was held before Doris E. Steinhardt, Hearing Officer, at the offices of the State Tax Commission, State Office Campus, Building 9, Albany, New York, on March 15, 1984 at 1:15 P.M., with all briefs to be submitted by June 25, 1984. Petitioner appeared by Robert C. Hague, Controller. The Audit Division appeared by John P. Dugan, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

ISSUE

Whether petitioner is entitled to employ a method other than that prescribed by Tax Law section 184.4(a) to compute gross earnings from transportation allocable to New York.

FINDINGS OF FACT

1. On its franchise tax report on capital stock and gross earnings for the year 1981, petitioner, Beacon Fast Freight Co., Inc. ("Beacon"), calculated the tax based on gross earnings from business in New York via an alternative

method (described in Finding of Fact "5", infra), that is, a method other than the formula prescribed by Tax Law section 184.4(a).

2. On January 5, 1983, the Audit Division issued to petitioner a Notice of Deficiency, asserting additional franchise tax due under section 184 for the year 1981 in the amount of \$7,723.00, plus interest thereon. The deficiency was premised upon the Audit Division's recomputation of petitioner's liability in accordance with the statutory formula (described in Finding of Fact "7", infra).

3. Beacon, a New York corporation which commenced business in this state in April, 1932, is an interstate motor carrier. Petitioner maintains combination offices/terminals at four locations: Avon, Massachusetts; Danvers, Massachusetts; Kearny, New Jersey; and Brooklyn, New York. Petitioner transports freight via tractor-trailer over established lanes of traffic between these locations, e.g., Danvers to Kearny; Kearny to Avon; and Avon to Brooklyn.¹ No movement of freight, however, occurs between Kearny and Brooklyn; for example, in the event a tractor which hauled a trailer from Avon to Kearny is needed to haul a laden trailer from Brooklyn to Avon, it "deadheads" (travels without a trailer) from Kearny to Brooklyn where that trailer is engaged. Further, freight is neither picked up nor delivered between terminals; thus, a tractor-trailer transporting goods between Danvers and Kearny merely traverses this state on the trip.

4. For a variety of purposes, including payroll and motor fuel tax reporting, petitioner maintains a daily lineup of the transportation of freight on the line haul basis. In essence, the lineup is a roster of one-way trips,

¹ Petitioner also transports goods to and from New Hampshire but does not have a terminal in that state.

and the United States in the Pacific Ocean.

The United States is a member of the United Nations.

The United States is a member of the North Atlantic Treaty Organization.

The United States is a member of the Organization for Economic Cooperation and Development.

The United States is a member of the World Trade Organization.

The United States is a member of the International Monetary Fund.

The United States is a member of the World Bank.

The United States is a member of the United Nations Security Council.

The United States is a member of the United Nations General Assembly.

The United States is a member of the United Nations Economic and Social Council.

The United States is a member of the United Nations Educational, Scientific and Cultural Organization.

The United States is a member of the United Nations Children's Fund.

The United States is a member of the United Nations Development Program.

The United States is a member of the United Nations Population Fund.

The United States is a member of the United Nations World Food Programme.

The United States is a member of the United Nations High Commissioner for Refugees.

The United States is a member of the United Nations Office for the Coordination of Humanitarian Affairs.

The United States is a member of the United Nations Secretariat for Children in Danger.

The United States is a member of the United Nations Children's Emergency Fund.

The United States is a member of the United Nations World Health Organization.

The United States is a member of the United Nations World Intellectual Property Organization.

The United States is a member of the United Nations World Tourism Organization.

The United States is a member of the United Nations World Bank Group.

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reflecting the terminal of origin, tractor number, trailer number, driver and destination. Petitioner also maintains records of the mileage between terminals, which mileage is periodically checked by odometer readings and occasionally audited by taxing jurisdictions. Lineups can be used in conjunction with mileage records to calculate total miles traversed during particular periods or total miles traversed over particular jurisdictions.

5. In calculating the tax on gross earnings for transportation within New York, petitioner effected a separation of its business into two operational units, hypothetical "Company A" and hypothetical "Company B". Petitioner then assigned trips during 1981 which merely traversed New York (e.g., Avon to Kearny) and the revenue generated therefrom to "Company A", and the trips during 1981 which commenced or terminated in New York (e.g., Avon to Brooklyn) and the revenue therefrom to "Company B". "Company A" thus transported freight between Massachusetts and New Hampshire, between Massachusetts and New Jersey, and between New Hampshire and New Jersey; "Company B" transported freight between Massachusetts and New York, and between New Hampshire and New York.

Petitioner calculated the tax on gross earnings from transportation within New York (the tax on "Company B"), as follows:

(a) allocation percentage

$$\frac{\begin{array}{l} \text{miles travelled in NY for shipments} \\ \text{originating or terminating in NY} \end{array}}{\begin{array}{l} \text{miles travelled everywhere for shipments} \\ \text{originating or terminating in NY} \end{array}} = \frac{306,094}{1,133,841} = 27\%$$

Petitioner excluded from the numerator and denominator of the allocation fraction nonrevenue deadheading miles, a procedure the Audit Division agrees was correct.

(b) net gross earnings from transportation originating or terminating in New York

Revenues from/to all locations		\$8,660,152
Less: revenues from MA/NH to NJ/NH	\$1,465,425	
revenues from NJ/NH to MA/NH	2,509,583	
C.O.D. fees for service within MA/NH/NJ	7,279	
fuel surcharges on revenue traversing NY	151,564	
storage fees for storage outside NY	1,077	
stevedoring charges at NJ piers	128,589	
Total revenues not applicable to NY		(4,263,517)
Net gross earnings within NY		\$4,396,635

(c) tax computation

Gross earnings from transportation within NY	\$4,396,635
Allocation percentage	.27
Earnings allocated to NY	\$1,187,091
Tax rate	.0075
Tax as reported	\$ 8,903

6. Petitioner's position, briefly stated, is that (a) it maintains sufficient records to effect a separation of revenue and miles into two operational units; (b) it is entitled to employ a method different from the statutory formula; and (c) application of the statutory formula results in a distortion of its tax liability. In support of the third contention, petitioner offered a comparison of the tax calculation for "Company A", "Company B" and the entire corporation, which comparison allegedly manifests a distortion of 20 percent arising from application of the statutory formula. The comparison is set forth below.

	"COMPANY A"	"COMPANY B"	BEACON (per statutory formula)
Miles travelled in NY	59,889	306,094	365,983
Miles travelled everywhere	711,685	1,133,841	1,845,526
Allocation percentage	8%	27%	20%
Revenues from MA and NH	\$1,465,425	\$2,084,504	\$3,549,929
Revenues from NJ	2,509,583	0	2,509,583
Revenues from NY	0	2,150,905	2,150,905
C.O.D. fees	7,279	3,871	11,150
Fuel surcharges	151,564	156,782	308,346
Detention charges	0	(82)	(82)

Storage charges	1,077	655	1,732
Stevedoring charges	128,589	0	128,589
Total Revenue	<u>\$4,263,517</u>	<u>\$4,396,635</u>	<u>\$8,660,152</u>
Less: stevedoring charges	128,589	0	128,589
Net Revenue	<u>\$4,134,928</u>	<u>\$4,396,635</u>	<u>\$8,531,563</u>
Allocation percentage	.08	.27	.20
Revenue allocated to NY	\$ 330,794	\$1,187,091	\$1,706,313
Tax rate	.0075	.0075	.0075
Tax	<u>\$ 2,481</u>	<u>\$ 8,903</u>	<u>\$ 12,797</u>
Tax due, per petitioner	0	\$ 8,903	

7. The Audit Division arrived at the amount of the asserted deficiency by multiplying petitioner's total gross receipts from transportation (\$8,210,417²) by petitioner's allocation factor of 27 percent. In its brief, the Audit Division conceded that the correct allocation factor is 20 percent, yielding a reduced deficiency of \$3,412.63.

Gross receipts from transportation	\$8,210,417
Allocation factor	.20
Gross receipts allocated to NY	\$1,642,083
Tax at .0075%	\$ 12,316
Tax reported	8,903
Tax due	<u>\$ 3,413</u>

8. "Company A" and "Company B" haul the same kinds of freight and utilize the same equipment. "Company A" serves petitioner's New Jersey customers, "Company B" serves petitioner's New York customers and both serve the Massachusetts customers. Petitioner charges its customers based upon the weight and packaging of goods and the mileage traversed, among other factors.

CONCLUSIONS OF LAW

A. That Tax Law section 184.1 imposes upon every transportation corporation, "for the privilege of exercising its corporate franchise, or of doing business,

² Neither side offered an explanation for the discrepancy between total revenue as shown in petitioner's calculation (\$8,531,563) and gross receipts as shown in the Audit Division's calculation.

or of employing capital, or of owning or leasing property in this state..., or of maintaining an office in this state...", a franchise tax in the amount of three-quarters of one percent upon its gross earnings from all sources within this state. Allocation to this state of gross earnings from transportation services is accomplished by multiplying the taxpayer's gross earnings from transportation within and without New York by a fraction, the numerator of which is the taxpayer's mileage within New York and the denominator of which is the taxpayer's mileage within and without New York. (Tax Law section 184.4[a].) In an instance where this prescribed method "does not fairly and equitably reflect gross earnings from all sources within this state, the tax commission shall prescribe methods of allocation or apportionment which fairly and equitably reflect gross earnings from all sources within this state". (Tax Law section 184.4[f].)

B. That petitioner's allocation method cannot be approved, and the asserted deficiency, as reduced by agreement of the Audit Division, must be sustained. The aim of the apportionment formula has been stated as follows:

"[W]hat the statute in substance does is to apportion gross receipts into two groups; those having a substantial nexus with the State of New York based upon actual revenue miles in the State of New York and those gross receipts derived wholly from external sources." (Emphasis added.) Matter of American Trucking Associations, Inc. v. N.Y.S. Tax Comm., 120 Misc.2d 191, 192-93 (Sup. Ct. Albany Co. 1982), affd. mem., 60 N.Y.2d 745 (1983).

Petitioner's bifurcation of its business into fictional divisions and its payment of tax upon only one of the divisions, "Company B", ignores the revenue miles traversed across New York by "Company A"; petitioner has failed to come forth with any computation which takes account of such revenue miles and which shows distortion of its tax liability. It is impossible on this record to

determine whether the statutory formulation indeed results in an unfair or inequitable allocation of petitioner's gross earnings.

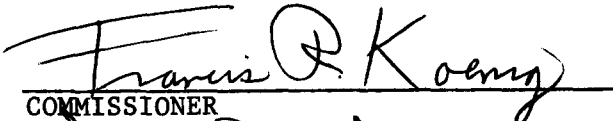
C. That the petition of Beacon Fast Freight Co., Inc. is denied, and the Notice of Deficiency, issued on January 5, 1983 and subsequently reduced by agreement of the Audit Division, is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

OCT 05 1984


PRESIDENT


COMMISSIONER


COMMISSIONER